

***National Labor Relations Board***  
**OFFICE OF THE GENERAL COUNSEL**  
**Advice Memorandum**

**DATE:** May 11, 1995

**TO:** James J. McDermott, Regional Director, Region 31

**FROM:** Barry J. Kearney, Acting Associate General Counsel, Division of Advice

**SUBJECT:** IBEW Local 428 (Bergelectric Corp.) Cases 31-CB-9483 and 9523

536-2581-3314, 548-6030-6725-1700, 548-6030-6725-8300

These Section 8(b)(1)(A) and (2) cases were submitted for advice on whether the Union lawfully gave a referral preference to hiring hall registrants who agreed to work for unorganized employers as Union "salts", and if so, whether Section 10(j) relief is warranted. <sup>(1)</sup>

The Union operates a hiring hall which allows nonworking employees to sign an out-of-work list. In 1989, the Union adopted a "Salting Resolution" allowing a Union member to work for nonsignatory employers, without incurring any Union discipline, if the member agreed to work as a "salt." The Salting Resolution also provided that such a member would retain his or her registration on the hiring hall out-of-work list during that employment. The Union's hiring hall dispatch procedure also provides that "[a]pplicants will be allowed to keep their name on the referral book while working for a non-signatory electrical contractor in accordance with the provisions of the Salting Resolution..."

The instant cases involve employee Haney who, in July 1994, resigned his Union membership and went to work for a nonsignatory employer. One month later, in August 1994, Haney signed the Union's hiring hall out-of-work list. On September 9, the Union informed Haney that his name had been removed from that list because Haney was currently employed in the industry.

On November 3, Haney was hired by the Employer in this case. <sup>(2)</sup> Around one month later, Haney met a fellow employee who told Haney that the Union was allowing him to remain on its out-of-work list because he had agreed to work under the Union's Salting Resolution. <sup>(3)</sup> On March 3, 1995, Haney filed one of the above charges <sup>(4)</sup> alleging that the Union unlawfully maintained the hiring hall rule allowing registrants to retain their place on the list if they agreed to work as "salts." Three days later, on March 6, the Union returned Haney's name to the out-of-work list.

Haney notes that while he had been registrant number 59 in September 1994, he became registrant number 9 on March 6, 1995. Haney points out that his raised standing on the list probably occurred because numerous registrants had been referred during that period. Haney therefore asserts that he may be due backpay in addition to reinstatement on the hiring hall register. <sup>(5)</sup>

We conclude, in agreement with the Region, that the Union's hiring hall preference for registrants who agree to work as "salts" violates Section 8(b)(1)(A) and (2) because such a preference is explicitly based upon union considerations thereby encouraging union membership.

The Board has made clear that a union violates Section 8(b)(1)(A) and 8(b)(2) when it bases hiring hall referral seniority on an employee's previous employment with employers who had bargaining agreements with the union. <sup>(6)</sup> In those cases the Board found that the hiring hall rules were based on "union considerations" which "give rise to the inference that employees are discouraged from exercising their Section 7 rights to work with a nonunion employer and are instead encouraged to work only with employers signatory to agreements with Respondent Unions." <sup>(7)</sup>

In ILWU, Local 19 (Pacific Maritime Association),<sup>(8)</sup> we considered a hiring hall rule giving preferential registration and classification rights to sons and daughters who were the sole surviving support of deceased longshoremen's families. We concluded that the rule was lawful because it was not concerned with internal union matters, and instead was motivated by a valid concern for the economic welfare of deceased employees' family members. We thus distinguished Plumbers Local 521 (Huntington Plumbing, Heating & Cooling Contractors Association),<sup>(9)</sup> where the union unlawfully preferred union officers, and their relatives, in making hiring hall referrals.

We conclude that the instant hiring hall registration preference for members and other registrants who agree to work as "salts" is unlawful because it is explicitly based on internal union concerns, viz., organizing nonsignatory employers. Unlike the preference in ILWU, Local 19 (Pacific Maritime Association), concerned with the economic welfare of the sole surviving supporters of deceased longshoremen's families, the instant preference is directly concerned with both union membership and union organizational concerns. As such, it encourages union activity and membership in a manner similar to the unlawful greater hiring hall seniority accorded in IATSE Local 659 (MPO-TV), supra.

B.J.K.

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<sup>1</sup> The issue of whether injunctive relief should be sought under Section 10(j) will be addressed in a separate memorandum.

<sup>2</sup> This Employer as well as Haney's prior employer were both subjects of Union organizational campaigns.

<sup>3</sup> It appears that this employee, unlike Haney, was a Union member.

<sup>4</sup> The Employer filed the other charge on January 20, 1995.

<sup>5</sup> Even if Haney were due no backpay, the alleged violation here is not moot. The Union has admitted the existence of its hiring hall preference for "salts", and that preference is specifically attacked by the Employer's outstanding charge.

<sup>6</sup> IATSE Local 659 (MPO-TV), 197 NLRB 1187 (1972); Teamsters Local 83 (Arizona AGC), 243 NLRB 328 (1979).

<sup>7</sup> 243 NLRB at 333. This inference arises because, under the hiring hall rules, an employee with greater experience may lose referral opportunities to a lesser experienced employee solely because the more experienced employee did not work for signatory employers while the lesser experienced employee did.

<sup>8</sup> Cases 19-CA-22278, 19-CB-7229, Advice Memorandum dated December 29, 1992.

<sup>9</sup> 301 NLRB 27 (1990).